

Attachment 2



California Regional Water Quality Control Board San Diego Region



Linda S. Adams
Secretary for
Environmental Protection

Over 50 Years Serving San Diego, Orange, and Riverside Counties
Recipient of the 2004 Environmental Award for Outstanding Achievement from USEPA

Edmund G. Brown, Jr.
Governor

9174 Sky Park Court, Suite 100, San Diego, California 92123-4353
(858) 467-2952 • Fax (858) 571-6972
[http:// www.waterboards.ca.gov/sandiego](http://www.waterboards.ca.gov/sandiego)

January 27, 2011

Certified Mail – Return Receipt Requested
Article Number: 7010 1060 0000 4952 7860

Mr. Jay Goldstone
Chief Operating Officer
City of San Diego
202 C Street
San Diego, CA 92101

In reply refer to:
CIWQS Place ID: 255222:carias

Dear Mr. Goldstone:

Subject: Notice of Violation, City of San Diego Construction Oversight Program, NPDES Order No. R9-2007-0001

Enclosed is Notice of Violation (NOV) No. R9-2011-0027 issued by the California Regional Water Quality Control Board, San Diego Region (San Diego Water Board) to the City of San Diego, Field Engineering Division of the Engineering and Capitol Projects Department, for violations of San Diego Municipal Storm Water Permit Order No. R9-2007-0001. As described in the NOV, the violations are subject to further enforcement pursuant to the California Water Code and the San Diego Water Board reserves the right to take any enforcement action authorized by law.

Please provide a written response by **February 28, 2011** that either confirms the violations have been corrected or identifies a date by which the violations will be corrected. Also, include what changes have been made by the City of San Diego, Field Engineering Division of the Engineering and Capitol Projects Department to ensure that these violations do not occur again.

In making the determination of whether and how to proceed with further enforcement action, the San Diego Water Board will consider both the time it takes to correct the identified violations and the sufficiency of the corrections.

California Environmental Protection Agency

In the subject line of any response, please include the requested **"In reply refer to:"** information located in the heading of this letter. For questions pertaining to the subject matter, please contact Christina Arias at (858) 627-3931 or carias@waterboards.ca.gov.

Respectfully,



DAVID T. BARKER, P.E.
Supervising Water Resource Control Engineer
Surface Waters Basins Branch

Signed under the authority delegated by the Executive Officer

DTB:esb:cma

Enclosures:

1. Notice of Violation No. R9-2011-0027
2. Facility Inspection Reports dated October 25, 2010 and December 22, 2010

Cc via email: (w/encl.)

Tony Heinrichs, THeinrichs@sandiego.gov
Kelly Broughton, KBroughton@sandiego.gov
David Zoumaras, DZoumaras@sandiego.gov
Kris McFadden, KMcfadden@sandiego.gov
Joan Brackin, JBrackin@sandiego.gov

CIWQS Entries:	Tech Staff Info & Use
Place ID	255222
Reg Msr ID	377340
NPDES No.	CAS0108758
WDID	900000510
Violation ID	889367



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City of San Diego
Construction Project Oversight

NOTICE OF VIOLATION No. R9-2011-0027

Violations of Order No. R9-2007-0001
January 27, 2011

Place ID: 255222: carias

The City of San Diego is hereby notified that the California Regional Water Quality Control Board, San Diego Region (San Diego Water Board) reserves the right to take any enforcement action authorized by law for the violations described herein.

The City of San Diego, Field Engineering Division of the Engineering and Capital Projects Department, is in violation of San Diego Water Board Order No. R9-2007-0001, National Pollutant Discharge Elimination System (NPDES) General Permit No. CAS0108758, *Waste Discharge Requirements For Discharges Of Urban Runoff From the Municipal Separate Storm Sewer Systems (MS4s) Draining the Watersheds of the County of San Diego, the Incorporated Cities of San Diego County, the San Diego Unified Port District, and the San Diego County Regional Airport Authority.*

A. Summary of Violations

1. Failure to Require Implementation of Designated Minimum Best Management Practices (BMPs) at Construction Sites

- a. Pursuant to Provision D.2. of Order No. R9-2007-0001:** Each Copermitttee shall implement a construction program which meets the requirements of this section, reduces construction site discharges of pollutants from the MS4 to the maximum extent practicable (MEP), and prevents construction site discharges from the MS4 from causing or contributing to a violation of water quality standards.
- b. Pursuant to Provision D.2.a.(2)(a) of Order No. R9-2007-0001:** Prior to approval and issuance of local construction and grading permits, each Copermitttee shall require all individual proposed construction sites to implement designated BMPs and other measures so that pollutants discharged from the site will be reduced to the MEP and will not cause or contribute to a violation of water quality standards.
- c. Pursuant to Provision D.2.c.(1)(b) of Order No. R9-2007-0001:** Each Copermitttee shall designate a minimum set of BMPs and other measures to be implemented at construction sites. The designated minimum set of BMPs shall include, at a minimum, erosion and sediment controls.

California Environmental Protection Agency

- d. **Pursuant to Provision D.2.c.(3) of Order No. R9-2007-0001:** Each Copermitttee shall implement, or require the implementation of, the designated minimum BMPs and any additional measures necessary to comply with this Order at each construction site within its jurisdiction year round.
- e. **Observation:** On October 25, 2010 and December 22, 2010, the San Diego Water Board inspected two construction sites within the City of San Diego's jurisdiction. These were Casa Mira View (WDID no. 9 37C353628), and Black Mountain Ranch/Del Sur (WDID no. 9 37C328390). Both construction sites lacked adequate erosion control and sediment control BMPs, designated minimum BMPs per provision D.2.c.(1)(b) of Order No. R9-2007-0001 and the City of San Diego's March 2008 Jurisdictional Urban Runoff Management Plan (JURMP). City of San Diego inspectors had inspected both sites days before San Diego Water Board inspectors, yet erosion and sediment control BMPs were not adequately implemented at either site.

Additionally, the Black Mountain Ranch/Del Sur site had no BMPs to control offsite run-on. This contributed to a failed berm and resulted in an illegal discharge of sediment laden water into Lusardi Creek, tributary to San Dieguito Creek and Lagoon. Specific findings regarding both construction sites are described in the attached Facility Inspection Reports dated October 25, 2010 and December 22, 2010.

2. Violation of Prohibitions and Receiving Water Limitations

- a. **Pursuant to Provision A.1. of Order No. R9-2007-0001:** Discharges into and from MS4s in a manner causing, or threatening to cause, a condition of pollution, contamination, or nuisance (as described in California Water Code section 13050), in waters of the state are prohibited.
- b. **Pursuant to Provision A.2. of Order No. R9-2007-0001:** Discharges from MS4s containing pollutants which have not been reduced to the MEP are prohibited.
- c. **Observation:** Because BMPs were not required to be implemented to the MEP at the Black Mountain Ranch/Del Sur site, an illegal discharge of sediment-laden water into Lusardi Creek occurred. Lusardi Creek is both an MS4 and a receiving water per Finding D.3.d of Order No. R9-2007-0001.

3. Failure to Report Construction Sites Exceeding the Maximum Disturbed Areas

- a. **Pursuant to Provision D.c.(1)(a) vi:** Each Copermittee shall designate a minimum set of BMPs and other measures to be implemented at construction sites. The designated minimum set of BMPs shall include, at a minimum, limitation of grading to a maximum disturbed area as determined by each Copermittee before either temporary or permanent erosion controls are implemented to prevent storm water pollution.
- b. **Pursuant to Provision J.3.a.(3)(b)v. of Order No. R9-2007-0001:** At a minimum, each Jurisdictional Urban Runoff Management Program Annual Report shall contain the following information: Confirmation that a maximum disturbed area for grading was applied to all applicable construction sites.
- c. **Observation:** Both the Casa Mira View and Black Mountain Ranch/Del Sur construction sites exceed the maximum disturbed areas of 5 acres during the rainy season, as specified in the City of San Diego's March, 2008 JURMP. The City of San Diego reported no construction sites exceeding 5 acres in its Annual Report for fiscal year 2009-2010. The Casa Mira View site is roughly 40 acres and commenced construction on November 1, 2008. The Black Mountain Ranch/Del Sur site is over 1,500 acres and commenced construction on March 12, 2003.

B. Summary of Potential Enforcement Options

These violations may subject you to additional enforcement by the San Diego Water Board or State Water Resources Control Board, including a potential civil liability assessment of \$10,000 per day of violation (Water Code section 13385) and/or any of the following enforcement actions:

Other Potential Enforcement Options	Applicable Water Code Section
Technical or Investigative Order	Sections 13267 or 13383
Cleanup and Abatement Order	Section 13304
Cease and Desist Order	Sections 13301-13303
Time Schedule Order	Sections 13300, 13308

In addition, the San Diego Water Board may consider revising or rescinding applicable waste discharge requirements, if any, referring the matter to other resource agencies, referring the matter to the State Attorney General for injunctive relief, and referral to the municipal or District Attorney for criminal prosecution.

Questions pertaining to this Notice of Violation should be directed to Christina Arias at 858-627-3931 or carias@waterboards.ca.gov.



DAVID T. BARKER, P.E.
Supervising Water Resource Control Engineer
Surface Waters Basins Branch

CIWQS Entries
Place ID: 255222
Reg Msr ID: 377340
Violation ID: 889367

**CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD - SAN DIEGO REGION
WATERSHED PROTECTION PROGRAM**

FACILITY INSPECTION REPORT

FACILITY: Casa Mira View **INSPECTION DATE/TIME:** 10/25/2010; 1330

WDID/FILE NO.: 9 37C353628

REPRESENTATIVE(S) PRESENT DURING INSPECTION:

NAME: <u> Christina Arias </u>	AFFILIATION: <u> San Diego Water Board </u>
NAME: <u> Rod Fink </u>	AFFILIATION: <u> Garden Communities </u>
NAME: _____	AFFILIATION: _____
NAME: _____	AFFILIATION: _____
NAME: _____	AFFILIATION: _____

Scripps Mesa Developers LLC
NAME OF OWNER, AGENCY OR PARTY RESPONSIBLE FOR DISCHARGE

8530 Costa Verde Blvd.
OWNER MAILING ADDRESS

(858) 320-0018
OWNER CONTACT NAME AND PHONE #

Garden Communities (Contractor)
FACILITY OR DEVELOPER NAME (if different from owner)

11241 Westview Pkwy, San Diego, 92126
FACILITY ADDRESS

FACILITY OR DEVELOPER CONTACT NAME AND PHONE #

APPLICABLE WATER QUALITY LICENSING REQUIREMENTS:

- | | |
|---|---|
| <input type="checkbox"/> MS4 URBAN RUNOFF REQUIREMENTS | <input type="checkbox"/> GENERAL OR INDIVIDUAL WASTE DISCHARGE REQUIREMENTS OR NPDES |
| <input checked="" type="checkbox"/> CONSTRUCTION GENERAL PERMIT | <input type="checkbox"/> GENERAL OR INDIVIDUAL WAIVER OF WASTE DISCHARGE REQUIREMENTS |
| <input type="checkbox"/> CALTRANS GENERAL PERMIT | <input type="checkbox"/> SECTION 401 WATER QUALITY CERTIFICATION |
| <input type="checkbox"/> INDUSTRIAL GENERAL PERMIT | <input type="checkbox"/> CWC SECTION 13264 |

INSPECTION TYPE (Check One):

- "A" TYPE COMPLIANCE--COMPREHENSIVE INSPECTION IN WHICH SAMPLES ARE TAKEN. (EPA TYPE S)
- "B" TYPE COMPLIANCE--A ROUTINE NONSAMPLING INSPECTION. (EPA TYPE C)
- NONCOMPLIANCE FOLLOW-UP--INSPECTION MADE TO VERIFY CORRECTION OF A PREVIOUSLY IDENTIFIED VIOLATION.
- ENFORCEMENT FOLLOW-UP--INSPECTION MADE TO VERIFY THAT CONDITIONS OF AN ENFORCEMENT ACTION ARE BEING MET.
- COMPLAINT--INSPECTION MADE IN RESPONSE TO A COMPLAINT.
- PRE-REQUIREMENT--INSPECTION MADE TO GATHER INFO. RELATIVE TO PREPARING, MODIFYING, OR RESCINDING REQUIREMENTS.
- NO EXPOSURE CERTIFICATION (NEC) - VERIFICATION THAT THERE IS NO EXPOSURE OF INDUSTRIAL ACTIVITIES TO STORM WATER.
- NOTICE OF TERMINATION REQUEST FOR INDUSTRIAL FACILITIES OR CONSTRUCTION SITES - VERIFICATION THAT THE FACILITY OR CONSTRUCTION SITE IS NOT SUBJECT TO PERMIT REQUIREMENTS.
- COMPLIANCE ASSISTANCE INSPECTION - OUTREACH INSPECTION DUE TO DISCHARGER'S REQUEST FOR COMPLIANCE ASSISTANCE.

INSPECTION FINDINGS:

Y WERE VIOLATIONS NOTED DURING THIS INSPECTION? (YES/NO/PENDING SAMPLE RESULTS)

Facility: Casa Mira View
Inspection Date: 10/25/2010

I. COMPLIANCE HISTORY / PURPOSE OF INSPECTION

On October 25, 2010, Christina Arias of the San Diego Water Board performed a routine inspection of the Casa Mira View construction site. This site is roughly 40 acres and is located West of I-15 in the Mira Mesa area of the City of San Diego. Photos of the site are attached and identified as Figures 1-12.

II. FINDINGS

1. The entire site lacked adequate erosion control BMPs including several slopes susceptible to discharge (Figures 3, 4, 6).
2. Inadequate entrance/exit BMPs that have not been maintained (Figure 1).
3. A shopping cart was found in the middle of the desilting basin (Figure 2).
4. Lack of adequate sediment control BMPs have resulted in the discharge of sediment onto the side walk, street, and into storm drains (Figures 1, 5, 7).
5. Temporary stockpiles, disturbed sediment, and chemical dust were found uncovered and close to the sidewalk (Figures 4, 6).
6. Sediment-laden water was being pumped from the construction site and discharged illegally into a storm drain (Figures 8-12). During the inspection, Christina Arias notified Rod Fink of Garden Communities to immediately cease the discharge.

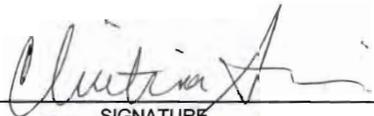
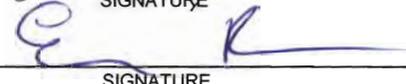
III. RECOMMENDATIONS AND ADDITIONAL COMMENTS

1. Prevent additional illegal pumping of sediment laden water into the storm drains. The illegal discharge observed during the inspection must be formally reported to the San Diego Water Board and Legally Responsible Person within 30 days (see SWPPP page 1-3).
2. Implement erosion control BMPs site-wide immediately.
3. Implement additional sediment control BMPs site-wide to prevent additional discharges of sediment. Site entrance/exit BMPs must be maintained.
4. Sediment from the construction site must be removed regularly from the public right-of-way and streets.
5. Temporary stockpiles should be covered during rain events.
6. Chemical residue should be removed and disposed of properly.

Facility: Casa Mira View
 Inspection Date: 10/25/2010

7. These findings will be used to evaluate compliance with Order No. 2009-0009-DWQ.

IV. SIGNATURE SECTION

Christina Arias STAFF INSPECTOR	 SIGNATURE	10/25/10 INSPECTION DATE
Eric Becker REVIEWED BY SUPERVISOR	 SIGNATURE	10/27/10 DATE

SMARTS:

Tech Staff Info & Use	
Application ID.	
WDID	9 37C353628
Inspection ID	2009070

Facility: Casa Mira View
Inspection Date: 10/25/2010



Note sediment on street. Gravel BMP in poor condition and in need of maintenance.

Figure 1. Construction site entrance



Shopping cart in desilting basin should be removed.

Figure 2. Desilting basin inside project boundaries

Facility: Casa Mira View
Inspection Date: 10/25/2010



Erosion control measures must be applied to slopes.

Figure 3. Uncovered slope (inside property)



Note uncovered stockpile and blue dust from pipe cutting

Figure 4. Project site at street level

Facility: Casa Mira View
Inspection Date: 10/25/2010



Project sediment is on sidewalk and street.

Figure 5. Sidewalk adjacent to project site



Slopes on West side (perimeter) of site have no erosion control BMPs. Also, disturbed sediment near sidewalk should be covered or removed.

Figure 6. Slope and project material at perimeter

Facility: Casa Mira View
Inspection Date: 10/25/2010



Area near storm drain inlet should be swept.

Figure 7. Storm drain inlet at North side of property



Riser pipe is wrapped with filter fabric. Note turbid water surrounding pipe entering via concrete swale.

Figure 8. Storm drain on Caltrans right of way (East side project boundary)

Facility: Casa Mira View
Inspection Date: 10/25/2010



Source of turbid water is illegal discharge from project site.

Figure 9. Outlet pipe of illegal discharge



Pipe from project site was placed through chain link fence to concrete swale.

Figure 10. Pipe leading off property (from pump)

Facility: Casa Mira View
Inspection Date: 10/25/2010



Pump intake line

Figure 11. Pump intake



Area of construction site being dewatered.

Figure 12. Dewatering area

**CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD - SAN DIEGO REGION
WATERSHED PROTECTION PROGRAM**

FACILITY INSPECTION REPORT

FACILITY: Del Sur/Unit 14 **INSPECTION DATE/TIME:** 12/22/2010; 1400

WDID/FILE NO.: 9 37C328390

REPRESENTATIVE(S) PRESENT DURING INSPECTION:

NAME: <u>Christina Arias</u>	AFFILIATION: <u>San Diego Water Board</u>
NAME: <u>Jody Ebsen</u>	AFFILIATION: <u>San Diego Water Board</u>
NAME: <u>Kurt Bruskotter</u>	AFFILIATION: <u>Black Mountain Ranch LLC</u>
NAME: _____	AFFILIATION: _____
NAME: _____	AFFILIATION: _____

Black Mountain Ranch LLC
NAME OF OWNER, AGENCY OR PARTY RESPONSIBLE FOR DISCHARGE

FACILITY OR DEVELOPER NAME (if different from owner)

16010 Camino del Sur, SD, CA 92127
OWNER MAILING ADDRESS

Camino del Sur and Del Sur Ct TB: 1169B5
FACILITY ADDRESS

Kurt Bruskotter (858) 792-7061
OWNER CONTACT NAME AND PHONE #

FACILITY OR DEVELOPER CONTACT NAME AND PHONE #

APPLICABLE WATER QUALITY LICENSING REQUIREMENTS:

- | | |
|---|---|
| <input type="checkbox"/> MS4 URBAN RUNOFF REQUIREMENTS | <input type="checkbox"/> GENERAL OR INDIVIDUAL WASTE DISCHARGE REQUIREMENTS OR NPDES |
| <input checked="" type="checkbox"/> CONSTRUCTION GENERAL PERMIT | <input type="checkbox"/> GENERAL OR INDIVIDUAL WAIVER OF WASTE DISCHARGE REQUIREMENTS |
| <input type="checkbox"/> CALTRANS GENERAL PERMIT | <input type="checkbox"/> SECTION 401 WATER QUALITY CERTIFICATION |
| <input type="checkbox"/> INDUSTRIAL GENERAL PERMIT | <input type="checkbox"/> CWC SECTION 13264 |

INSPECTION TYPE (Check One):

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INSPECTION FINDINGS:

Y WERE VIOLATIONS NOTED DURING THIS INSPECTION? (YES/NO/PENDING SAMPLE RESULTS)

Facility: Del Sur Unit 14
Inspection Date: 12/22/2010

I. COMPLIANCE HISTORY / PURPOSE OF INSPECTION

On December 22, 2010, Christina Arias and Jody Ebsen of the San Diego Water Board performed a routine inspection of the Del Sur Unit 14 construction site. This site is part of a master development of residential and commercial buildings known as Black Mountain Ranch, roughly 1,500 acres in size, and under construction since June 2004. This site is located in the Rancho Santa Fe area of the City of San Diego, west of I-15 and abuts Lusardi Creek to the south. Photos of the site are attached and identified as Figures 1-9.

Rain gauges onsite recorded approximately 6 inches of rain from this series of storms, which spanned several days, at the time of inspection (according to Mr. Bruskotter). The NOAA rain gauge at Poway recorded 6.37 inches of rain between 12/16/10 and 12/22/10.

II. FINDINGS

1. This phase of development is known as Del Sur Unit 14. This site is approximately 30 acres in size, all of which is in the rough grading stage. A berm was being constructed at the site perimeter to temporarily detain the storm water. At the time of inspection, permanent detention basins had not been completed.
2. A silt fence was placed around the perimeter of the construction site. No erosion control BMPs were identified.
3. Newly finished houses are located upstream of this site and contributed storm water run-on to this construction area. This area has a gradual slope towards Lusardi Creek, which is tributary to San Dieguito River and lagoon.
4. The berm at the perimeter that was used to temporarily detain the storm water was overwhelmed by recent storms. Sediment-laden storm water breached the berm in at least two places and entered Lusardi Creek (Figures 4-9).
5. The discharger placed visqueen at the locations of both breaches in order to prevent the berm from further eroding, but was ineffective.

III. RECOMMENDATIONS AND ADDITIONAL COMMENTS

1. Given the size of the construction site, volume of disturbed sediment, and proximity to Lusardi Creek, the site lacks adequate sediment and erosion control BMPs.
2. Sediment control basins can be used provided they are designed with adequate capacity to capture and treat sediment-laden storm water generated from the site. Implementation of sediment basins should have been done at the onset of rough grading, as described in the SWPPP Site Maps (see Exhibit Showing

Facility: Del Sur Unit 14
 Inspection Date: 12/22/2010

Temporary BMPs for "Grading and Land Development Phase" for Black Mountain Ranch North Village Unit 14, dated June 30, 2010.

3. Run-on from upstream development contributed to the breach. BMPs should be implemented to accommodate run-on volume and prevent erosion on the site.
4. Page 24 of the SWPPP states that there is no anticipated run-on to the project; therefore, no measures are applicable. The discharger must amend the SWPPP to add in proper measures to accommodate run-on because run-on was a major factor in the illegal discharge.
5. Erosion control BMPs should be implemented at the site including on all slopes.
6. These findings will be used to evaluate compliance with Order No. 2009-0009-DWQ.
7. This site is considered Risk Level 1 because it was an existing project under Order No. 99-08-DWQ. The Risk Level should be re-evaluated given the potential for discharges and negative impacts to the adjacent creek.

IV. SIGNATURE SECTION

Christina Arias		12/22/2010
STAFF INSPECTOR	SIGNATURE	INSPECTION DATE
Eric Becker		1/3/11
REVIEWED BY SUPERVISOR	SIGNATURE	DATE

SMARTS:

Tech Staff Info & Use	
Application ID.	
WDID	9 37C328390
Inspection ID	2009852
Violation ID	843117

Facility: Del Sur Unit 14
Inspection Date: 12/22/2010



Sites of two recent breaches

Figure 1. Construction site; looking south at Lusardi Creek



Berm that will eventually be used as permanent storm water detention feature

Figure 2. Construction site; looking east from Camino del Sur

Facility: Del Sur Unit 14
Inspection Date: 12/22/2010



Storm water detention basin used to detain offsite run on from upstream development

Figure 3. Construction site looking northeast



Note slopes have no erosion control

Figure 4. Berm used to detain storm water

Facility: Del Sur Unit 14
Inspection Date: 12/22/2010



Figure 5. Construction site looking upstream from location of breach



Sediment from construction site has entered Lusardi Creek

Figure 6. Foot of berm

Facility: Del Sur Unit 14
Inspection Date: 12/22/2010



Figure 7. Location of second breach



Note discoloration of storm water from site mixing with creek

Figure 8. Construction site discharge entering Lusardi Creek

Facility: Del Sur Unit 14
Inspection Date: 12/22/2010



Note silt fences are underwater.

Figure 9. Construction site discharge entering Lusardi Creek